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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: OCT 05 2011 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a computer workstation manufacturer business.[1] It seeks to employ the beneficiary permanently in the United States as a program manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a Form ETA 750,[2] Application for Alien Employment Certification, which the Department of Labor (DOL) approved, accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not meet the specified job requirements and qualify for the classification sought. Specifically, the director determined that the beneficiary did not possess the requisite education.

As will be explained below, the appeal will be rejected because the petitioner did not sign the Form G-28, Notice of Entry of Appearance as Attorney or Representative, accompanying the appeal, the petition, the introductory letter of support, or the alien employment certification.

[redacted] the petitioner's corporate immigration manager, did not sign the notarized Power of Attorney (POA) until December 10, 2007. The document purports to authorize all attorneys at [redacted] "to sign immigration documents for [redacted] on her behalf. As will be discussed, this document does not meet the signature requirements of any of the controlling U.S. Citizenship and Immigration Services (USCIS) regulations.

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[1] During the adjudication of the appeal, evidence has come to light that the petitioning business in this matter, Sun Microsystems, Inc., is merged out in the state of California according to the California Secretary of State's Business Search's website. *See* http://kepler.sos.ca.gov/cbs.aspx (accessed September 8, 2011 and incorporated into the record of proceeding). If the petitioning business is no longer an active business, the petition and its appeal to this office have become moot. Where there is no active business, no *bona fide* job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case. Moreover, any such concealment of the true status of the organization by the petitioner seriously compromises the credibility of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.) It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Id.*

[2] After March 28, 2005, the correct form to apply for alien employment certification is the Form ETA 9089.

Significantly, an attorney signed the Form G-28 accompanying the appeal on August 25, 2008, the petition on September 28, 2007, the introductory letter of support from the petitioner on October 15, 2007, and the alien employment certification on February 18, 2004. Thus, an official of the petitioning employer has not executed certain required forms that relate to the beneficiary.

The AAO notes that an attorney signed the petition, the petitioner's introductory letter of support, and the alien employment certification even before [redacted] executed the POA on December 10, 2007.

I. Signature on the Form G-28 Accompanying the Appeal

The appeal must be rejected because it was improperly filed. The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

> *Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity in certain circumstances. However, the petitioner did not actually sign and validate the August 25, 2008 Form G-28.

The regulation at 8 C.F.R. § 292.4(a) (1994) provides:

> An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. During Immigration Judge or Board proceedings, withdrawal and/or substitution of counsel is permitted only in accordance with Sec. 3.16 and 3.36 respectively. During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. *A notice of appearance entered in application or petition proceedings must*

> *be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.*

(Emphasis added.) The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on Form G-28 is "not properly signed, the application or petition will be processed as if the notice had not been submitted."[3]

The POA is not a properly executed Form G-28 and does not meet the requirements of the regulation at 8 C.F.R. § 292.4(a). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides the following with respect to appeals by attorneys without a proper Form G-28:

> (i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.
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> (ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.
>
> (iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney

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[3] Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as a consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule "Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits" 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 "would address potential Privacy Act concerns." The agency emphasized that the "petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding." 59 Fed. Reg. 1455 (Jan. 11, 1994). A 2010 revision to the regulation at 8 C.F.R. § 292.4(a) retains the requirement that a petitioner or applicant sign the Form G-28. 75 Fed. Reg. 5225 (Feb. 2, 1010).

> or representative submits a properly executed Form G-28 entitling that person to file the appeal.

As an attorney signed the appeal without a properly executed Form G-28, the appeal must be rejected. Requesting a proper Form G-28 signed by the petitioner in this matter would serve no purpose as the underlying visa petition was not properly filed.

II. Signatures on the Form I-140 Visa Petition, Petitioner's Letter of Support and the Form ETA 750 Alien Employment Certification

The Form I-140 petition identifies [redacted]s the employer and the petitioner. In this instance, no employee or officer of [redacted] signed the Form I-140 visa petition.

Based on a review of the record, including the signature template in the POA, the only signatures on the visa petition are those of an individual who claims to represent the petitioner as an attorney. An individual other than an authorized official of [redacted] Inc. signed Part 8 of the Form I-140, in the block provided for "Petitioner's Signature," thereby seeking to file the petition on behalf of the actual U.S. employer. However, the regulations do not permit any individual who is not the petitioner to sign a Form I-140 on behalf of a U.S. employer.

The regulation at 8 C.F.R. § 204.5(c) provides:

> *Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

> *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly

filed because the petitioning U.S. employer, [redacted], Inc., did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

As will be discussed in more detail below, the requirement for a signature *under penalty of perjury* cannot be met by a POA authorized signature. Practically, the signature requirement reflects a genuine Form I-140 program concern regarding the validity of the permanent job offers contained in Form I-140 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer has] knowledge." Thus, the form I-140 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Thus, an attorney's unsupported assertions on the petition and the letter of support have no evidentiary value.

Furthermore, as on the petition, the signature line on the alien employment certification for the employer provides that the petitioner is certifying pursuant to 28 U.S.C. § 1746 and "under penalty of perjury" that the information listed on this document is true and correct. That statute requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever ... in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true ... is guilty of perjury." 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera,* 342 B.R. 435, 459 (D. N.J. 2006) *citing Blumberg v. Gates,* No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

Moreover, the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition, the alien employment certification and the support letter have no evidentiary value.

IV. Conclusion

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all immigration documents on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. While the AAO does not allege any malfeasance in this matter, the AAO notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky,* Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

The appeal has not been filed by the petitioner. The petitioner did not sign the Form G-28 accompanying the appeal. Therefore, the appeal has not been properly filed and must be rejected. Moreover, the petitioner did not file the underlying petition properly as the petitioner did not sign the petition, the introductory letter of support, or the alien employment certification. Thus, further action on the petition cannot be pursued.

ORDER: The appeal is rejected.